

SERVICE DATE - LATE RELEASE JULY 16, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-88 (Sub-No. 10X)

BESSEMER AND LAKE ERIE RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN ARMSTRONG AND BUTLER COUNTIES, PA

Decided: July 16, 2001

Bessemer and Lake Erie Railroad Company (B&LE) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances for B&LE to abandon and discontinue service over its line of railroad known as the Western Allegheny Branch, extending from Station 1400+80 East to End of Track, at Station 2460+98, in Armstrong and Butler Counties, PA, a distance of 20.1 miles (line). Notice of the exemption was served and published in the Federal Register on October 10, 2000 (65 FR 60246).¹

By decision served January 17, 2001, the Board imposed a 180-day public use condition under 49 U.S.C. 10905.² The public use condition required B&LE to keep intact all of the right-of-way underlying the tracks, including bridges, trestles, culverts and tunnels (but not track, ties and signal equipment), for a period of 180 days from the effective date of the exemption to permit public use negotiations. The 180-day period will expire on July 17, 2001.

On July 9, 2001, the Ecologically Concerned of Zelienople, Inc. (Zelienople) late-filed a request for a NITU and for a 180-day public use condition.³ By letter filed July 5, 2001, B&LE states that it is not willing to negotiate with Zelienople for interim trail use.⁴ Because

¹ The exemption was scheduled to become effective on November 9, 2000. By decision served November 8, 2000, the Board postponed the effective date of the exemption until January 18, 2001, pending completion of the offer of financial assistance (OFA) process.

² In addition, the January 17 decision noted that the OFA process had been terminated, imposed a further environmental condition that B&LE consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic markers, and denied a request for a notice of interim trail use/rail banking (NITU) under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

³ Requests for trail use/rail banking under 49 CFR 1152.29 were due by October 20, 2000. Requests for public use conditions under 49 CFR 1152.28 were due by October 30, 2000.

⁴ While the official filing date of Zelienople's request was July 9, 2001, B&LE was
(continued...)

16 U.S.C. 1247(d) permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. See Rail Abandonment—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591 (1986).

Zelienople's public use request also will be denied. As noted in the January 17 decision, the 180-day public use condition was not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that had been found appropriate for public purposes. Under 49 U.S.C. 10905, the Board may impose a public use condition for a maximum period of 180 days. Thus, the 180-day public use condition imposed in the January 17 decision is scheduled to expire on July 17, 2001, and may not be renewed. Accordingly, Zelienople's request for a public use condition will be denied.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request for issuance of a notice of interim trail use is denied.
2. The request for an additional public use condition is denied.
3. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

⁴(...continued)

aware of it earlier than that, as reflected by its response filed on July 5, 2001. Zelienople's filing indicates that B&LE has repeatedly declined to meet with them to discuss the terms of a sale, and due to B&LE's recent reorganization, B&LE had indicated that such a meeting could not occur until this summer. According to B&LE, it has never declined to meet with Zelienople and, prior to receiving Zelienople's filing, had no knowledge of Zelienople's interests.